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City of Stockton

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

In re:  
CITY OF STOCKTON, CALIFORNIA,  
Debtor.

Case No. 2012-32118

D.C. No. OHS-7

Chapter 9

**DECLARATION OF ROBERT DEIS IN  
SUPPORT OF THE CITY OF  
STOCKTON'S MOTION UNDER  
BANKRUPTCY RULE 9019 FOR  
APPROVAL OF ITS SETTLEMENT  
WITH AMBAC ASSURANCE  
CORPORATION**

Date: April 2, 2013  
Time: 9:30 a.m.  
Dept: C, Courtroom 35  
Judge: Hon. Christopher Klein

I, Robert Deis, hereby declare:

I am the City Manager of the City of Stockton, California (the "City"). I make this declaration in support of the City of Stockton's Motion under Bankruptcy Rule 9019 for Approval of its Settlement with Ambac Assurance Corporation (the "Motion" for approval of the settlement with Ambac"). The City's settlement with Ambac is memorialized in the Stipulation

1 and Settlement Agreement (the "Settlement Agreement"), a true and correct copy of which is  
2 attached hereto as Exhibit A.

3 The parties to the Settlement Agreement are the City, Ambac, Stockton Public  
4 Financing Authority (the "Authority"), and Wells Fargo Bank National Association, as Indenture  
5 Trustee (of those certain City of Stockton Certificates of Participation, (Redevelopment Housing  
6 Projects) Series 2003A and City of Stockton Certificates of Participation, (Redevelopment  
7 Housing Projects) Taxable Series 2003B (the "Certificates") (the "Trustee" and collectively with  
8 the City, Ambac and the Authority, the "Parties").

9 The Settlement Agreement encompasses the resolution of certain issues and  
10 disputes between the Parties, and avoids the risks and costs associated with litigation of such  
11 potential disputes. The City believes that the terms of the Settlement Agreement are fair and  
12 equitable, and are in the best interests of the City and its creditors.

13 Ambac provided a financial guaranty policy (the "Insurance Policy") insuring the  
14 Certificates issued by the Authority to fund affordable housing projects in the City. The  
15 Certificates represent interests in lease payments made by the City for the use and occupancy of  
16 certain fire and police stations as well as a library. These buildings were leased by the City to the  
17 Authority and then leased back to the City pursuant to a Lease Agreement dated as of June 1,  
18 2003 (the "Lease").

19 The Certificates are obligations of the Authority (Series 2003A in the original  
20 amount of \$1,160,000 and Series 2003B in the original amount of \$12,140,000), payable from  
21 and secured by the revenues and receipts derived by the Authority from the Lease. The  
22 Authority assigned its interest under the Lease to the Trustee pursuant to an Assignment  
23 Agreement dated as of June 1, 2003 (the "Assignment Agreement"). Thus, the City's payments  
24 under the Lease are paid directly to the Trustee for the benefit of the holders of the Certificates  
25 and the Certificates are a General Fund obligation of the City.

26 The City is in default under the Lease pursuant to Sections 8.1(b) and (d) of the  
27 Lease. Pursuant to Section 12.09 of the Trust Agreement, so long as the Insurer is not in default  
28 under its Insurance Policy, the Insurer controls and directs the enforcement of all rights and



1 remedies granted to the owners of the Certificates and the Trustee under the Trust Agreement and  
2 pursuant to Section 13.13 of the Trust Agreement, following an Event of Default, the Insurer shall  
3 be deemed the owner of all Certificates for certain purposes under Trust Agreement. The City  
4 expects that claims will be presented to and paid by Ambac under the Insurance Policy. Any such  
5 payments by Ambac will afford it subrogation claims against the City on behalf of such holders.

6 In light of the foregoing, the Parties, including the Trustee at the direction of  
7 Ambac, entered into the Settlement Agreement which, among other things, restructures the City's  
8 General Fund obligations and provides additional liquidity for the City.

9 The terms of the Settlement Agreement and related documents are summarized in  
10 the Motion. I believe that the summary is an accurate one, and thus will not repeat it here. I note  
11 that in the event of a conflict between the Settlement Agreement and the summary in the Motion,  
12 the former controls.

13 The Settlement Agreement provides immediate liquidity for the City by permitting  
14 it to deplete the applicable reserve fund to pay principal of and interest on the Certificates in fiscal  
15 year 2013. In addition to the use of the monies in the Reserve Fund in 2013, in fiscal year 2014,  
16 the City's General Fund obligations will be reduced by 70%. Moreover, the Settlement  
17 Agreement will provide the City with additional long-term liquidity through the reduction of the  
18 City's General Fund obligations under the Lease by 19.5% beginning in fiscal year 2015 as  
19 outlined in Schedule 1 to the Settlement Agreement. The shortfall in payments by the City will  
20 be funded through the application of amounts available from the Reserve Fund, amounts  
21 available from the housing set-aside, and payments made available by Ambac under the Insurance  
22 Policy, such that holders of the Certificates will receive their full contractual principal and interest  
23 on the payment dates and holders of Certificates should therefore not be impacted. Importantly,  
24 the Settlement Agreement requires the Trustee and Insurer to forbear with respect to recovery of  
25 the shortfall in payments due from the City for the benefit of the holders of the Certificates so  
26 long as the City is in compliance with the terms of the Settlement Agreement. By significantly  
27 reducing the City's short-term obligations and providing a long-term discount on future  
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1 obligations under the Trust Agreement, the Settlement Agreement provides the City with the  
2 ability to pay other current obligations and restructure its debts.

3 I believe that there are sound legal arguments with respect to the disputes between  
4 the City, the Trustee and Ambac, if litigated. The Settlement Agreement consensually resolves  
5 the complex disputes between the Parties, thereby avoiding the dissipation of the City's resources  
6 in litigation. For example, one of the many disputes between the Parties relates to whether the  
7 debt underlying the Certificates is a true lease or disguised financing transaction. If the  
8 transaction is categorized as a financing, further issues relating to the proper mechanism for  
9 valuation of the underlying collateral would be ripe for litigation. Litigation of these disputes, in  
10 addition to the numerous other issues surrounding the Certificates, would require not only the  
11 usual costs and delay attendant to litigation, but may entail expense beyond any benefit that could  
12 be achieved. Thus, the Settlement Agreement is not only reasonable but an essential alternative  
13 to future litigation. Under the circumstances, the proposed compromise is fair and reasonable, as  
14 it approximates the City's good-faith estimation of risks associated with their respective claims  
15 and defenses.

16 The Settlement Agreement reduces the City's potential and immediate liabilities to  
17 the Insurer and holders of the Certificates. Accordingly, creditors will benefit from immediate  
18 access to such funds. It does not in any way modify Ambac's obligations under the Insurance  
19 Policy to make full and timely payments on the Certificates when due according to the terms of  
20 the Insurance Policy, the rights of holders of the Certificates should not be impacted by the  
21 Settlement Agreement.

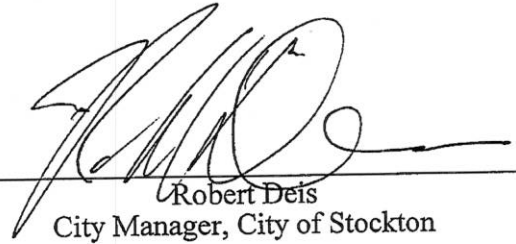
22 Finally, the Settlement Agreement, in resolving the claim of a financial creditor, is  
23 an important step toward the City's goal of proposing and confirming a plan of adjustment. Like  
24 the City's settlements with its nine labor unions, its having reached agreement with Ambac is a  
25 demonstration of the willingness of the City and key creditors to compromise their disputes for  
26 the benefit of all parties in interest.



1 I declare under penalty of perjury that to the best of my knowledge, information  
2 and belief, the foregoing is true and correct.

3 Signed in Stockton, California, on February 25, 2013

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5  
6 By: \_\_\_\_\_

  
Robert Deis  
City Manager, City of Stockton

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# **Exhibit A**



## **STIPULATION AND SETTLEMENT AGREEMENT**

This stipulation and agreement (the “**Agreement**”), dated as of February 26, 2013, by and among (a) the CITY OF STOCKTON, a charter city and municipal corporation existing under its charter and the constitution of the State of California (the “**City**”), the STOCKTON PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California together with its successors and assigns (together with its successors and assigns, the “**Authority**”), WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America solely in its capacity as trustee under the Trust Agreement (as defined below) (together with its successors and assigns, the “**Trustee**”) and AMBAC ASSURANCE CORPORATION, a Wisconsin stock insurance corporation (together with its successors and assigns, the “**Insurer**”) (each a “**Party**” and collectively the “**Parties**”). Capitalized terms used but not otherwise defined herein shall have the meanings set forth in Article I below.

### **RECITALS**

A. The City and Authority are parties to that certain Site and Facility Lease dated as of June 1, 2003 (as it may be amended from time to time, the “**Site Lease**”), pursuant to which the City agreed to lease to the Authority certain property consisting primarily of the City’s main downtown police facility, a library and three fire stations (the “**Leased Premises**”), as more fully described in the Site Lease.

B. The City and the Authority are parties to that certain Lease Agreement dated as of June 1, 2003 (as it may be amended from time to time, the “**Lease**”), pursuant to which the City, among other things, subleases from the Authority the Leased Premises.

C. The City, Authority and Trustee are parties to that certain Trust Agreement dated as of June 1, 2003 (as it may be amended from time to time, the “**Trust Agreement**”), pursuant to which the Trustee executed and delivered those certain Certificates of Participation, (Redevelopment Housing Projects) Series 2003A in the original principal amount of \$1,160,000 and Taxable Series 2003B in the original principal amount of \$12,140,000 (the “**Certificates**”), which Certificates are obligations of the Authority, payable from and secured by the revenues and receipts derived by the Authority from the Lease.

D. The Trustee and Authority are parties to that certain Assignment Agreement dated as of June 1, 2003 (as it may be amended from time to time, the “**Assignment Agreement**”), pursuant to which the Authority, among other things, assigned to the Trustee for the benefit of holders of the Certificates, substantially all of the Authority’s right, title and interest in and to the Lease, including its right to receive the Lease Payments due under the Lease.

E. The Insurer issued that certain Financial Guaranty Insurance Policy Number 21154BE with an effective date of June 27, 2003 (as it may be amended from time to time, the “**Insurance Policy**”), pursuant to which the Insurer, among other things, agreed to make scheduled payments of principal or interests on the Certificates pursuant to its terms.

F. On June 28, 2012, the City filed a voluntary petition for relief under chapter 9 of title 11 of the United States Code (the “**Bankruptcy Code**”), thereby commencing Bankruptcy Case No. 12-32118 (the “**Bankruptcy Case**”) before the United States Bankruptcy Court for the Eastern District of California (the “**Bankruptcy Court**”).

G. The City is in default under the Lease pursuant to Sections 8.1(b) and (d) of the Lease.

H. Pursuant to Section 12.09 of the Trust Agreement, so long as the Insurer shall not be in default under its Insurance Policy, the Insurer shall control and direct the enforcement of all rights and remedies granted to the owner of the Certificates and the Trustee under the Trust Agreement and pursuant to Section 13.13, following an Event of Default, shall be deemed the Owner of all Certificates for all purposes under Trust Agreement, including without limitation directing the Trustee to enter into this Stipulation and Settlement Agreement.

I. The Parties and their counsel engaged in good faith, arms’ length settlement discussions regarding a consensual resolution of potential disputes between and among the Parties arising out of or related to the Lease, Trust Agreement, and the Insurance Policy.

J. As part of the Parties’ negotiated settlement, the City and Authority will be authorized and shall enter into this Agreement and a supplement to the trust agreement, which will result in additional liquidity and other concessions for the benefit of the City.

NOW, THEREFORE, the Parties, in consideration of the promises, covenants and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

## **ARTICLE I DEFINITIONS**

Section 1.1. **Recitals.** The recitals set forth above are incorporated by reference and are explicitly made a part of this Agreement.



Section 1.2. Definitions. In addition to the capitalized terms defined in the preamble and recitals, the following definitions shall apply to and constitute part of this Agreement and all schedules, exhibits and annexes hereto:

**“Approval Motion”** shall mean the motion to be filed with the Bankruptcy Court seeking entry of the Approval Order pursuant to Federal Rule of Bankruptcy Procedure 9019, which motion shall be filed by the City on or before February 28, 2013.

**“Approval Order”** shall mean the order of the Bankruptcy Court approving the compromise and settlement set forth in this Agreement as well as any associated findings of fact and conclusions of law authorizing and directing the consummation of the transactions contemplated herein, which order shall be submitted to the Bankruptcy Court in a form satisfactory to the Parties.

**“Ambac Payments”** shall mean payments made by the Insurer under the Insurance Policy as described in Section 2.8 herein.

**“Community Redevelopment Property Trust Fund”** shall have the meaning ascribed in the California Health and Safety Code.

**“Conditions to Forbearance”** shall mean the conditions to forbearance under this Agreement, as defined in Section 2.6(b) herein.

**“Effective Date”** shall mean the first business day following the day on which all of the conditions contained in Section 5.1 of this Agreement have either occurred or been expressly waived in writing by the Parties.

**“Final Order”** shall mean an order or judgment including any associated findings of fact and conclusions of law of the Bankruptcy Court or other court of competent jurisdiction with respect to the applicable subject matter which has not been reversed, stayed, modified or amended and as to which (a) any right to appeal or seek certiorari, review, reargument, stay or rehearing has expired and no appeal or petition for certiorari, review, reargument, stay or rehearing is pending, or (b) an appeal has been taken or petition for certiorari, review, reargument, stay or rehearing has been filed and (i) such appeal or petition for certiorari, review, reargument, stay or rehearing has been resolved by the highest court to which the order or judgment was appealed or from which certiorari, review, reargument, stay or rehearing was sought or (ii) the time to appeal further or seek certiorari, review, reargument, stay or rehearing has expired and no such further appeal or petition for certiorari, review, reargument, stay or rehearing is pending; provided, however, that the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Federal Rule of Bankruptcy Procedure 9024 may be filed relating to such order shall not cause such order to not be a Final Order.

**“General Fund Payment”** shall mean the portion of the Lease Payment to be paid by the City in accordance with the General Fund Payment Schedule.

**“General Fund Payment Schedule”** shall mean that certain General Fund Payment Schedule annexed hereto as Schedule 1.

**“Housing Set-Aside Amounts”** shall have the meaning ascribed in the Reimbursement Agreement.

**“Lease Payment”** shall have the meaning ascribed in the Lease.

**“Opinion”** shall mean that certain no adverse effect tax opinion delivered by counsel to the City in the form attached hereto as Exhibit D.

**“Payment Date”** shall mean the date a General Fund Payment is due pursuant to the General Fund Payment Schedule.

**“Plan”** shall mean the chapter 9 plan of adjustment filed by the City.

**“Reimbursement Agreement”** shall mean that certain Reimbursement Agreement dated as of June 1, 2003, by and between the Successor Agency and the City, pursuant to which the Successor Agency has agreed to utilize the Housing Set-Aside Amounts to reimburse to the City for the moneys paid by the City under the Lease.

**“Reserve Fund”** shall have the meaning ascribed in the Trust Agreement.

**“Reserve Requirement”** shall have the meaning ascribed in the Trust Agreement.

**“Site Lease Assignment Agreement”** shall mean that certain Assignment Agreement by and between the Authority and the Trustee, pursuant to which the Authority has agreed to assign all rights and interests in the Site Lease to the Trustee in substantially the form annexed hereto as Exhibit A.

**“Successor Agency”** shall mean the City of Stockton, in its capacity of Successor Agency to the Redevelopment Agency of the City of Stockton.

**“Supplemental Trust Agreement”** shall mean that certain First Supplemental Trust Agreement by and between the City, Authority and Trustee in substantially the form annexed hereto as Exhibit B.

**“Trust Agreement”** shall mean the Original Trust Agreement, as amended by the Supplemental Trust Agreement.

Section 1.3. Interpretation. The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof will arise favoring or disfavoring any Party hereto because of the authorship of any provision of this Agreement.



Section 1.4. General Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires

(a) Defined terms in the singular shall include the plural as well as the singular, and vice versa.

(b) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles. All references herein to “generally accepted accounting principles” refer to such principles as they exist at the date of application there.

(c) All references in this instrument to designated “Articles”, “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(d) The terms “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(e) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(f) The term “person” shall include any individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization and any government or agency or political subdivision thereof.

## **ARTICLE II SETTLEMENT TERMS**

Section 2.1. Supplemental Trust Agreement. On the Effective Date, the City, Authority and Trustee shall be authorized to and shall enter into the Supplemental Trust Agreement. The Insurer hereby consents to the terms and provisions of the Supplemental Trust Agreement.

Section 2.2. Site Lease Assignment Agreement. On the Effective Date, the Authority and the Trustee shall be authorized to and shall enter into the Site Lease Assignment Agreement and the City shall be authorized to and shall acknowledge and consent thereto.

Section 2.3. Direction Letter and Opinion. The Insurer shall issue a direction letter to the Trustee directing the Trustee to execute and deliver this Agreement and the Supplemental Trust Agreement and to perform its obligations thereunder.

Counsel to the City shall deliver the Opinion on the Effective Date, dated as of the Effective Date.

Section 2.4. Recordation. Promptly following the Effective Date, the fully-executed Site Lease Assignment Agreement and Approval Order shall be recorded in the Office of the San Joaquin County Recorder.

Section 2.5. Forbearance.

(a) Subject to the express provisions of this Agreement, the Insurer and the Trustee agree to forbear from exercising their rights and remedies under the Lease and Trust Agreement.

(b) The agreement to forbear is conditioned upon and subject to the following Conditions of Forbearance:

(i) The City shall make General Fund Payments in an amount equal to the lesser of (A) the amounts set forth in the General Fund Payment Schedule, or (B) the amount equal to the difference between the stated principal and interest payments on the Certificates due on each Payment Date and the amount available to the City pursuant to Section 5.04, clauses 1 and 2(d)(ii) of the Supplemental Trust Agreement and Section 2.7 of this Agreement to be applied to the payment of the Certificates. Each General Fund Payment shall be paid by the City, in immediately available funds, on the respective "Payment Dates" set forth in the General Fund Payment Schedule. The obligation of the City to make General Fund Payments shall be subject to abatement pursuant to Section 5.3 of the Lease.

(ii) The General Fund Payments shall be paid by the City directly to the Trustee; provided that from and after the date on which the Certificate holders (other than Insurer) are paid in full, the General Fund Payments shall be paid by the City directly to the Insurer for its own account as reimbursement for amounts owing to the Insurer on account of the Ambac Payments and the payment of legal fees pursuant to Section 6.8 herein, together with interest thereon, pursuant to Section 2.8. At such time as all Ambac Payments and all Certificates have been paid in full, no further General Fund Payments shall be payable hereunder.

(iii) As additional security for the payments by the Insurer pursuant to the Insurance Policy, as of the Effective Date, all of the City's rights, title and interest under the Reimbursement Agreement, including the right to the Housing Set-Aside Amounts shall hereby be automatically pledged and collaterally assigned to the Trustee. Under the Supplemental Trust Agreement, the Trustee shall grant, pledge and assign its rights, title and interest to the Reimbursement Agreement and such Housing Set-Aside Amounts to the Insurer in accordance with the terms of such Supplemental Trust Agreement and the City hereby consents to such further assignment. The City agrees not to terminate or amend the Reimbursement Agreement without the prior written consent of the Insurer and the Trustee and without the consent of the Insurer after the date



the Reimbursement Agreement is assigned to the Insurer. The foregoing pledge and assignment shall remain effective until all amounts due are paid to the Certificate holders and to the Insurer as provided under this Agreement.

(iv) As of the Effective Date, the City and Authority agree that the term of the Lease is extended until September 5, 2048 or such later date until all amounts owing to the Insurer under this Agreement have been paid in full. Such extension shall remain effective until all amounts due are paid to the Certificate holders and to the Insurer as provided under this Agreement.

(v) Upon payment in full of all amounts owing to the Insurer and holders of the Certificates under this Agreement and the Trust Agreement (or, as to the Certificate holders, upon discharge of the Trust Agreement pursuant to section 13.01 thereof) the Trustee and the Insurer agree to execute such documents as may be requested by the City to evidence the termination of the Site Lease, the Lease, the Assignment Agreement, the Site Lease Assignment Agreement, and this Agreement in the proper form for recordation of the office of the San Joaquin County Recorder.

Section 2.6. Assignment of Reimbursement Agreement. The City shall notify the Successor Agency and cause the Successor Agency to acknowledge that upon the Effective Date, all rights of the City under the Reimbursement Agreement, including rights to receive payments from the Housing Set-Aside Amounts have been assigned by the City to the Trustee, and in accordance with the Supplemental Trust Agreement will be assigned by the Trustee to the Insurer. The City shall direct the Successor Agency to pay the Trustee, all payments payable by the Successor Agency under the Reimbursement Agreement. Such payments will be wired in available funds to the Housing Set-Aside Subaccount of the Lease Payment Fund under the Trust Agreement. The City shall further direct the Successor Agency not to terminate or amend the Reimbursement Agreement and the City shall not permit the termination or amendment of the Reimbursement Agreement without the prior written consent of the Insurer and the Trustee. The City hereby represents and warrants that pursuant to and in accordance with Section 5 of the Reimbursement Agreement, the term of the Reimbursement Agreement has been extended until September 5, 2048 or such later date until all amounts owing to the Insurer under this agreement have been paid in full. The City agrees that the Trustee and Insurer are authorized to file all documents necessary to perfect its interests in the Reimbursement Agreement and the City shall cooperate with the Trustee and Insurer to effectuate such filing.

Section 2.7. Debt Service Reserve Fund. The Trustee agrees to apply monies in the Reserve Fund as exists as of the Effective Date to pay principal of and interest on the Certificates commencing with the Certificate Payment due on September 1, 2013 in the amount necessary to pay debt service on the Certificates minus amounts available from Housing Set-Aside Subaccount of the Lease Payment Fund established pursuant to the Supplemental Trust Agreement until the Reserve Fund is exhausted. Amounts so applied from the Reserve Fund shall be a credit against the General Fund

Payments due from the City hereunder. Replenishment of the Reserve Fund to the Reserve Requirement will take place with excess Housing Set-Aside Amounts paid pursuant to the Reimbursement Agreement as set forth in the Supplemental Trust Agreement. The parties acknowledge that amounts in the Series 2003A Account of the Reserve Fund shall be used to pay principal of and interest on the Series 2003A Certificates and amounts in the Taxable Series 2003B Account of the Reserve Fund shall be used to pay principal of and interest on the Series 2003B Certificates.

Section 2.8. Continued Payments Under Policy. In accordance with the Policy, Insurer shall pay the Trustee such amounts as are necessary to make scheduled payments of principal and interest on the Certificates after giving effect to amounts paid or distributed on account of this agreement and Housing Set-Aside Amounts paid to the Trustee. The interest rate on Ambac Payments will accrue at 8% compounded annually.

No Certificate may be voluntarily prepaid or defeased unless any and all amounts owing to the Insurer are first paid in full.

Section 2.9. Non-Performance. Upon any noncompliance by the City with any of the Conditions of Forbearance, noncompliance with any of the other provisions of this Agreement, or the occurrence of an event of default as defined in Section 8.1 of the Lease (other than noncompliance with Section 3.4 (a) of the Lease), the Insurer shall have the right, subject to the terms of the Trust Agreement, to instruct the Trustee to exercise or exercise itself any remedies that may be available, including instructions contrary to the direction letter delivered pursuant to Section 2.3 hereof.

Section 2.10. Successor Agency Sale Proceeds. The City shall cause the Successor Agency to work with the Insurer to agree upon a list of all properties which (a) will be sold by the Successor Agency, or (b) to be transferred to the Community Redevelopment Property Trust Fund of the Successor Agency and sold pursuant to the long-range property management plan developed and authorized in accordance with the applicable sections of the Health and Safety Code. The City and the Insurer will, and the City shall cause the Successor Agency to, use their best efforts to obtain written approval of the long-range property management plan developed by the Successor Agency and approved by the Insurer prior to submission which will provide, among other things, that all of the proceeds from the sale of the properties be used to satisfy outstanding obligations under the bonds of the Successor Agency and Reimbursement Agreement in accordance with the existing priorities under applicable law prior to any distribution of such proceeds to taxing agencies under the Health and Safety Code. The City shall, and the City shall cause the Successor Agency to, diligently pursue the sales of the properties in accordance with applicable law and shall provide the Insurer and the Trustee with a written monthly report of all progress and activity taken in connection with such sales.

Section 2.11. Future Agreements. In the event the City (i) enters into any subsequent agreement through stipulation or otherwise with or (ii) proposes a Plan relating to, in each case, the treatment of any other issue of the City's certificates of participation or lease revenue bonds, which provides for benefits or terms more favorable



for such creditors than those contained in this Agreement with respect to amounts payable by the City from its General Fund, then this Agreement shall be deemed to be modified to provide the Trustee and Insurer with those more favorable benefits and terms; provided, that this Section 2.11 shall not apply to any agreements or Plan treatment with respect to any lease financings or similar arrangements with respect to personal property or to the Stockton Public Financing Authority Lease Revenue Refunding Bonds, 2006 Series A. The City shall notify the Insurer promptly of the existence of such more favorable benefits and terms and the Insurer shall have the right to receive the more favorable benefits and terms immediately without further order of the Bankruptcy Court. The Parties shall immediately amend this Agreement to contain the more favorable terms and conditions.

Section 2.12. Successor Agency. The City agrees that it will remain as the Successor Agency until all obligations relating to the Successor Agency in this Agreement have been complied with.

Section 2.13. Judgment by Confession. The City shall execute, and shall cause its counsel to execute, and provide to the Insurer, documents sufficient to authorize an entry of a judgment by confession substantially in the form attached hereto as Exhibit C (the "**Judgment by Confession**"), to secure the City's obligations under this Agreement. The City hereby authorizes any attorney at law to appear in any court of record in California after the Judgment by Confession becomes effective pursuant to Section 2.14(b) and admit the amount of the City's obligations then due and owing under this Agreement, waive the issuing and service of process, and confess judgment against the City in favor of the Insurer for the amount then appearing due under this Agreement and the costs of collection, including reasonable attorney fees and legal costs. The City shall also waive all errors, rights of appeal, and stays of execution. Notwithstanding the City's failure to make payments required by this Agreement, the Insurer may not obtain or enforce the Judgment by Confession unless it first becomes effective pursuant to Section 2.14(b).

Section 2.14. Effect of Dismissal of the Bankruptcy Case. In the event the Bankruptcy Case is dismissed, the following provisions shall become immediately effective and enforceable:

(a) Notwithstanding anything to the contrary in this Agreement, the terms and provisions of this Agreement shall no longer be subject to conditions listed in Section 5.1(b) and shall become immediately and fully effective and enforceable.

(b) The Judgment by Confession shall become effective, and in the event the City fails to make any payments required by this Agreement after the dismissal of the Bankruptcy Case, the Insurer may obtain and enforce the Judgment by Confession without further notice to the City.



(c) Within sixty (60) days of the dismissal of the Bankruptcy Case, Ambac may immediately terminate the Agreement by written notice to the City.

### **ARTICLE III PLAN OF ADJUSTMENT AND PLAN SUPPORT**

Section 3.1. Plan Support Commitment. From and after the date hereof, and provided that (a) the Bankruptcy Court has entered the Approval Order, and (b) the City has complied with its covenants and obligations under this Agreement, the Insurer will support the Plan and take such action as is reasonably necessary to support confirmation and consummation of the Plan which provides for separate classification of the claims of the Insurer and the Certificate holders with respect to the Certificates into two classes, each class shall provide for all claims of the Insurer and the Certificate holders to be satisfied through the City's recognition and performance of its obligations under this Agreement. The Insurer in its capacity as insurer and sole owner of all Certificates pursuant to the Trust Agreement agrees to vote for such Plan. Subject to the terms and conditions of this Agreement, the Plan will affirm that the Lease, Trust Agreement, Site Lease and Reimbursement Agreement shall be assumed and remain in full force and effect. Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall not constitute an agreement by the City, Trustee or the Insurer to take any step or action that would violate any provision of applicable bankruptcy law or any other applicable laws, and to the extent any provision shall be construed as constituting such a violation, such provision shall be deemed stricken herefrom and of no force and effect without liability to any of the Parties.

Section 3.2. Solicitation Required in Connection with Plan. Notwithstanding anything contained in this Article III or elsewhere in this Agreement to the contrary, this Agreement is not, and shall not be deemed to be, a solicitation of acceptances of the Plan. The City, the Trustee and the Insurer acknowledge and agree that the acceptance of the Plan will not be solicited until the Bankruptcy Court has approved the disclosure statement and related ballots, and such disclosure statement and ballots have been transmitted to parties entitled to receive same.

### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**

Section 4.1. Mutual Representations and Warranties. Unless otherwise noted, each Party makes the following representations, warranties and covenants (on a several basis, with respect to such Party only) to each of the other Parties, each of which are continuing representations, warranties and covenants:

(a) Each Party has all requisite power and authority to own the properties it owns, to execute this Agreement and to consummate the transactions contemplated hereby.

(b) Each Party has full requisite power and authority to execute and deliver and to perform its obligations under this Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by it in connection herewith (i) have been duly and validly authorized by it and (ii) are not in contravention of its organizational documents or any agreements specifically applicable to it.

(c) Each person signing this Agreement warrants that he or she is legally competent and authorized to execute this Agreement on behalf of the Party whose name is subscribed at or above such person's signature.

(d) The Parties have not made any statement or representation to each other regarding any facts relied upon by them in entering into this Agreement, and each of them specifically does not rely upon any statement, representation or promise of the other Parties hereto or any other person in entering into this Agreement, except as expressly stated herein or in the exhibits hereto. Each party has relied upon its own investigation and analysis of the facts and not on any statement or representation made by any other party in choosing to enter into this Agreement and the transactions contemplated herein.

(e) The Parties and their respective attorneys have made such investigation of the facts pertaining to this Agreement and all of the matters pertaining thereto as they deem necessary.

## **ARTICLE V EFFECTIVE DATE AND TERMINATION**

Section 5.1. Conditions to Effective Date. The terms and provisions of this Agreement are expressly subject to the following conditions unless waived, in writing, by the Parties:

(a) the execution and delivery of this Agreement by each of the entities identified on the signature pages of this Agreement; and

(b) the entry of the Approval Order by the Bankruptcy Court and such Approval Order shall have become a Final Order.

Section 5.2. Termination of Agreement. This Agreement may be terminated by the City or the Insurer, at their sole option and discretion, in the event that the Approval Order is not entered by the Bankruptcy Court on or prior to July 1, 2013.

Section 5.3. Effect of Termination. Except as otherwise provided herein, in the event of the termination of this Agreement or in the event the conditions of Section 5.1 are not satisfied, this Agreement shall become null and void and be deemed of no force and effect, with no liability on the part of any Party hereto (or of any of its directors, officers, employees, consultants, contractors, agents, legal and financial



advisors or other representatives), and no Party shall have any obligations to any other Party arising out of this Agreement, and this Agreement, the Supplemental Trust Agreement, the Direction Letter (except as set forth therein) and the Site Lease Assignment Agreement shall each be of no force and effect. Upon termination, neither this Agreement nor any terms or provisions set forth herein shall be admissible in any dispute, litigation, proceeding or controversy among the Parties and nothing contained herein shall constitute or be deemed to be an admission by any Party as to any matter, it being understood that the statements and resolutions reached herein were as a result of negotiations and compromises of the respective positions of the Parties. In addition, after such termination, no Party shall seek to take discovery concerning this Agreement or admit this Agreement or any part of it into evidence against any other Party hereto. Upon termination of this Agreement, the Insurer's right to obtain and enforce the Judgment by Confession shall lapse.

## ARTICLE VI MISCELLANEOUS

Section 6.1. Amendments. This Agreement may not be modified, amended or supplemented except by a written agreement executed by each Party to be affected, by such modification, amendment or supplement.

Section 6.2. No Admission of Liability.

(a) The execution of this Agreement is not intended to be, nor shall it be construed as, an admission or evidence in any pending or subsequent suit, action, proceeding or dispute of any liability, wrongdoing, or obligation whatsoever (including as to the merits of any claim or defense) by any Party to any other Party or any other person with respect to any of the matters addressed in this Agreement.

(b) None of this Agreement (including, without limitation, the recitals and exhibits hereto), the settlement or any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement: (i) is or may be deemed to be or may be used as an admission or evidence of the validity of any claim or of any wrongdoing or liability of any Party; or (ii) is or may be deemed to be or may be used as an admission or evidence of any liability, fault or omission of any Party in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. None of this Agreement, the settlement, or any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement shall be admissible in any proceeding for any purposes, except to enforce the terms of the Agreement, and except that any Party may file this Agreement in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on the principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense of counterclaim.



Section 6.3. Good Faith Negotiations. The Parties recognize and acknowledge that each of the Parties hereto is represented by counsel, and such Party received independent legal advice with respect to the advisability of entering into this Agreement. Each of the Parties acknowledges that the negotiations leading up to this Agreement were conducted regularly and at arm's length; this Agreement is made and executed by and of each Party's own free will; that each knows all of the relevant facts and his or its rights in connection therewith, and that he or it has not been improperly influenced or induced to make this settlement as a result of any act or action on the part of any party or employee, agent, attorney or representative of any party to this Agreement. The Parties further acknowledge that they entered into this Agreement because of their desire to avoid the further expense and inconvenience of litigation and other disputes, and to compromise permanently and settle the claims between the Parties settled by the execution of this Agreement.

Section 6.4. Rights and Immunities. Notwithstanding anything herein to the contrary, the Trustee is entitled to all of the rights, privileges and immunities set forth in the Trust Agreement. The Trustee is executing this Stipulation and Settlement Agreement solely as Trustee with respect to the Certificates and not in its capacity as trustee with respect to any other obligations of the Authority, City or Successor Agency. Furthermore, nothing in this Agreement is intended to impair any rights, remedies and interests, including without limitation, liens, of any of the Parties hereto in any other capacity.

Section 6.5. Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any Person other than the Parties hereto and their respective successors and assigns, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereof; and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the Parties hereto and their respective successors and assigns.

Section 6.6. Governing Law; Retention of Jurisdiction; Service of Process. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without giving effect to any principles of conflicts of law and applicable federal law. By its execution and delivery of this Agreement, each of the Parties hereby irrevocably and unconditionally agrees for itself that any legal action, suit or proceeding between any or all of the foregoing with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, shall be brought in the Bankruptcy Court for that purpose only, and, by execution and delivery of this Agreement, each hereby irrevocably accepts and submits itself to the jurisdiction of such court, generally and unconditionally, with respect to any such action, suit or proceeding. In the event any such action, suit or proceeding is commenced, the Parties hereby agree and consent that service of process may be made, and personal jurisdiction over any Party hereto in any such action, suit or proceeding may be obtained, by service

of a copy of the summons, complaint and other pleadings required to commence such action, suit or proceeding upon the Party at the address of such Party set forth in Section 6.13 hereof, unless another address has been designated by such Party in a notice given to the other Parties in accordance with Section 6.13 hereof.

Section 6.7. Fees and Expenses. If the City, Insurer or Trustee brings an action against the other Party based upon a breach by the City, Insurer or Trustee of its obligations under this Agreement, the prevailing Party shall be entitled to all reasonable expenses incurred, including reasonable attorneys' fees and expenses.

Section 6.8. Reimbursement of Attorney's Fees. The City shall reimburse the Insurer and the Trustee for the fees and expenses of the Insurer and Trustee, including attorney's fees and expenses incurred in connection with the Certificates and Bankruptcy Case (a) in relation to the Insurer, accrued through the date of execution and delivery of this Agreement in the amount of \$240,000, and (b) in relation to the Insurer and Trustee accrued from the date of the execution and delivery of this Agreement through the effective date of the Plan (the "Outstanding Fees and Expenses") through application of Housing Set-Aside Amounts paid pursuant to the Reimbursement Agreement as set forth in section 5.04 of the Trust Agreement. The Trustee and Insurer shall submit invoices to the City relating to the Outstanding Fees and Expenses specified in (b) herein on a monthly basis. Interest will accrue on the Outstanding Fees and Expenses at an interest rate of 8% compounded annually. The City and Authority will be obligated to pay ongoing Trustee fees and expenses as required under the Trust Agreement and Lease.

Section 6.9. Headings. The headings of the Articles and Sections of this Agreement are inserted for convenience only and are not part of this Agreement and do not in any way limit or modify the terms or provisions of this Agreement and shall not affect the interpretation hereof.

Section 6.10. Binding Agreement Successors and Assigns; Joint and Several Obligations. This Agreement shall be binding only upon the execution and delivery of this Agreement by the Parties listed on the signature pages hereto, subject to a Final Order as to the City. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, assigns, administrators, constituents and representatives. The agreements, representations, covenants and obligations of the Parties under this Agreement are several only and not joint in any respect and none shall be responsible for the performance or breach of this Agreement by another.

Section 6.11. Entire Agreement. This Agreement, the Approval Order, the Supplemental Trust Agreement, the Direction Letter and the Site Lease Assignment Agreement shall constitute the full and entire agreement among the Parties with regard to the subject hereof, and supersedes all prior negotiations, representations, promises or warranties (oral or otherwise) made by any Party with respect to the subject matter hereof. No Party has entered into this Agreement in reliance on any other Party's prior



representation, promise or warranty (oral or otherwise) except for those that may be expressly set forth in this Agreement.

Section 6.12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

Section 6.13. Notices. All demands, notices, requests, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given (a), when personally delivered by courier service or messenger, (b) upon actual receipt (as established by confirmation of receipt or otherwise) during normal business hours, otherwise on the first business day thereafter if transmitted electronically (by e-mail transmission), by facsimile or telecopier, with confirmation of receipt, or (c) three (3) Business Days after being duly deposited in the mail, by certified or registered mail, postage prepaid-return receipt requested, to the following addresses, or such other addresses as may be furnished hereafter by notice in writing, to the following Parties:

If to the City, to:

City of Stockton  
22 E. Weber Avenue, Room 350  
Stockton, California 95202  
Attention: Director, Housing & Redevelopment  
Fax: (209) 937-8822

-and-

City of Stockton  
425 North El Dorado Street  
Stockton, California 95202  
Attn: City Manager  
Fax: (209) 937-8447

with a copy given in like manner to:

Orrick, Herrington & Sutcliffe LLP  
400 Capitol Mall, Suite 3000  
Sacramento, California 95814-4497  
Attention: Marc A. Levinson, Esq.  
Fax: (916) 329-4900  
Email: [malevinson@orrick.com](mailto:malevinson@orrick.com)



If to the Authority, to:

Stockton Public Financing Authority  
425 North El Dorado Street  
Stockton, California 95202  
Fax: (209) 937-8898

If to the Trustee, to:

Wells Fargo Bank, National Association  
Corporate Trust Services—Special Accounts  
625 Marquette Avenue, 11<sup>th</sup> Floor  
MAC N9311-115  
Minneapolis, MN 55479  
Attention: Lucinda Hruska-Claeys  
Fax: (612) 667-5047  
Email: [lucinda.hruska-claeys@wellsfargo.com](mailto:lucinda.hruska-claeys@wellsfargo.com)

with a copy given in like manner to:

Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.  
One Financial Center  
Boston, Massachusetts 02111  
Attention: William W. Kannel, Esq.  
Fax: (617) 542-2241  
Email: [wkannel@mintz.com](mailto:wkannel@mintz.com)

If to the Insurer, to:

Ambac Assurance Corporation  
One State Street Plaza  
New York, New York 10004  
Attention: Surveillance Department and General Counsel's Office  
Fax: (212) 208-3384

with a copy given in like manner to:

Arent Fox LLP  
1675 Broadway  
New York, New York 10019  
Attention: David L. Dubrow, Esq.  
Telecopy: (212) 484-3990  
Email: [david.dubrow@arentfox.com](mailto:david.dubrow@arentfox.com)

Section 6.14. Further Assurances. Each of the Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to

take all such action as the other Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement.

(Signature page follows)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

THE CITY OF STOCKTON,  
CALIFORNIA, as Debtor

By: \_\_\_\_\_  
Name:  
Title:

THE STOCKTON PUBLIC FINANCE  
AUTHORITY

By: \_\_\_\_\_  
Name:  
Title:

WELLS FARGO BANK NATIONAL  
ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Name:  
Title:

AMBAC ASSURANCE CORPORATION,  
as Insurer

By: \_\_\_\_\_  
Name:  
Title:



**Schedule 1**

Payment Date	Principal	Interest	Debt Service	General Fund Payment
8/15/2013	360,000	318,798	678,798	678,798
2/15/2014	0	310,884	310,884	93,265
8/15/2014	375,000	310,884	685,884	205,765
2/15/2015	0	302,587	302,587	243,583
8/15/2015	390,000	302,587	692,587	557,533
2/15/2016	0	293,952	293,952	236,631
8/15/2016	410,000	293,952	703,952	566,681
2/15/2017	0	284,870	284,870	229,320
8/15/2017	430,000	284,870	714,870	575,470
2/15/2018	0	275,316	275,316	221,629
8/15/2018	445,000	275,316	720,316	579,854
2/15/2019	0	264,066	264,066	212,573
8/15/2019	470,000	264,066	734,066	590,923
2/15/2020	0	252,159	252,159	202,988
8/15/2020	495,000	252,159	747,159	601,463
2/15/2021	0	239,604	239,604	192,881
8/15/2021	515,000	239,604	754,604	607,456
2/15/2022	0	226,531	226,531	182,357
8/15/2022	545,000	226,531	771,531	621,082
2/15/2023	0	212,679	212,679	171,207
8/15/2023	570,000	212,679	782,679	630,057
2/15/2024	0	198,180	198,180	159,535
8/15/2024	600,000	198,180	798,180	642,535
2/15/2025	0	182,597	182,597	146,991
8/15/2025	630,000	182,597	812,597	654,141
2/15/2026	0	166,249	166,249	133,830
8/15/2026	665,000	166,249	831,249	669,155
2/15/2027	0	148,976	148,976	119,926
8/15/2027	700,000	148,976	848,976	683,426
2/15/2028	0	130,805	130,805	105,298
8/15/2028	735,000	130,805	865,805	696,973
2/15/2029	0	111,672	111,672	89,896
8/15/2029	775,000	111,672	886,672	713,771
2/15/2030	0	91,506	91,506	73,662

8/15/2030	810,000	91,506	901,506	725,712
2/15/2031	0	70,417	70,417	56,686
8/15/2031	855,000	70,417	925,417	744,961
2/15/2032	0	48,161	48,161	38,770
8/15/2032	905,000	48,161	953,161	767,295
2/15/2033	0	24,609	24,609	19,810
8/15/2033	945,000	24,609	969,609	780,535
2/15/2034	0	0	0	400,000
8/15/2034	0	0	0	400,000
2/15/2035	0	0	0	400,000
8/15/2035	0	0	0	400,000
2/15/2036	0	0	0	400,000
8/15/2036	0	0	0	400,000
2/15/2037	0	0	0	400,000
8/15/2037	0	0	0	400,000
2/15/2038	0	0	0	400,000
8/15/2038	0	0	0	400,000
2/15/2039	0	0	0	400,000
8/15/2039	0	0	0	400,000
2/15/2040	0	0	0	400,000
8/15/2040	0	0	0	400,000
2/15/2041	0	0	0	400,000
8/15/2041	0	0	0	400,000
2/15/2042	0	0	0	400,000
8/15/2042	0	0	0	400,000
2/15/2043	0	0	0	400,000
8/15/2043	0	0	0	400,000
2/15/2044	0	0	0	400,000
8/15/2044	0	0	0	400,000
2/15/2045	0	0	0	400,000
8/15/2045	0	0	0	400,000
2/15/2046	0	0	0	400,000
8/15/2046	0	0	0	400,000
2/15/2047	0	0	0	400,000
8/15/2047	0	0	0	400,000
2/15/2048	0	0	0	400,000
8/15/2048	0	0	0	400,000



**Exhibit A**

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Arent Fox LLP  
1675 Broadway  
New York, New York 10019  
Attn: David L. Dubrow, Esq.

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**COLLATERAL ASSIGNMENT OF SITE AND FACILITY LEASE**

*This Assignment of Site and Facility Lease* is made and entered into as of [●], 2013, by and among the STOCKTON PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California ("**Assignor**"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as Trustee ("**Assignee**").

**W I T N E S S E T H:**

That for good and valuable consideration, as collateral security for the performance of the Assignee's obligations under that certain Trust Agreement dated as of June 1, 2003 (as amended and supplemented, the "**Trust Agreement**"), by and between the City, Assignor and Assignee, the Assignor does hereby collaterally assign, convey, set over and deliver to Assignee as their respective interests may appear all of Assignor's right, title, and interest in and to the site lease set forth on **EXHIBIT "A"**, attached hereto and made a part hereto.



*Witness*, this Assignment of Site and Facility Lease has been duly executed as of the day and year first above written.

THE STOCKTON PUBLIC FINANCE  
AUTHORITY

By: \_\_\_\_\_

Name:

Title:

*Witness*, this Assignment of Site and Facility Lease has been duly executed as of the day and year first above written.

WELLS FARGO BANK NATIONAL  
ASSOCIATION, as Trustee

By: \_\_\_\_\_

Name:

Title:

**CONSENT TO ASSIGNMENT**

The CITY OF STOCKTON, a charter city and municipal corporation existing under the constitution and laws of the State of California, hereby acknowledges, agrees and consents to the execution and delivery of the Collateral Assignment of the Site and Facility Lease dated [●], 2013, between Assignor and Assignee.

THE CITY OF STOCKTON, CALIFORNIA

By: \_\_\_\_\_

Name:

Title:



**EXHIBIT "A"**

That certain Site and Facility Lease dated as of June 1, 2003 by and between the City of Stockton, a charter city and municipal corporation existing under the constitution and laws of the State of California (the "City") and the Stockton Public Financing Authority, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority") which was recorded in the Official Records of County of San Joaquin, California on June 26, 2003 as Document No.2003-140079.

**Exhibit B**

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**SUPPLEMENTAL TRUST AGREEMENT**

**Dated as of [●], 2013**

**by and among**

**WELLS FARGO BANK, NATIONAL ASSOCIATION  
as Trustee**

**STOCKTON PUBLIC FINANCING AUTHORITY**

**and the**

**CITY OF STOCKTON**

**Relating to**

**\$1,160,000  
City of Stockton  
Certificates of Participation  
(Redevelopment Housing Projects)  
Series 2003A**

**and**

**\$12,140,000  
City of Stockton  
Certificates of Participation  
(Redevelopment Housing Projects)  
Taxable Series 2003B**

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THIS FIRST SUPPLEMENTAL TRUST AGREEMENT, dated as of [●], 2013 (the "**Supplemental Trust Agreement**"), is by and among WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as Trustee solely in its capacity as trustee under the Original Trust Agreement (as defined below) (the "**Trustee**"), STOCKTON PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "**Authority**"), and the CITY OF STOCKTON, a charter city and municipal corporation existing under its charter and the constitution of the State of California (the "**City**").

**RECITALS:**

A. The Authority has caused to be executed and delivered Certificates of Participation (Redevelopment Housing Projects), Series 2003A in the original principal amount of \$1,160,000 and Taxable Series 2003B in the original principal amount of \$12,140,000 (the "**Certificates**") pursuant to that certain Trust Agreement dated as of June 1, 2003 (the "**Original Trust Agreement**"), by and between the City, Authority and the Trustee. The Certificates were executed and delivered to provide financing for to assist the Redevelopment Agency of the City of Stockton (the "**Agency**") in undertaking various redevelopment housing projects (the "**Projects**") of benefit to the Agency's several redevelopment project areas. This Supplemental Trust Agreement is executed and delivered by the Authority and the Trustee to amend and supplement the Original Trust Agreement. The Original Trust Agreement, as supplemented and amended by the Supplemental Trust Agreement, is herein referred to as the Trust Agreement.

B. On June 28, 2012, the City filed a voluntary petition for relief under chapter 9 of title 11 of the United States Code (the "**Bankruptcy Code**"), thereby commencing Bankruptcy Case No. 12-32118 before the United States Bankruptcy Court for the Eastern District of California (the "**Bankruptcy Court**");

C. Pursuant to Section 9.02 of the Original Trust Agreement, a Supplemental Trust Agreement may be executed and delivered with the written consent of the Insurer and the owners of a majority in the aggregate principal amount of the Certificates outstanding and pursuant to Section 13.13 of the Original Trust Agreement, so long as the Insurer shall not be in default under its Insurance Policy, the Insurer shall be deemed the owner of the Certificates for purposes of execution and delivery of a Supplemental Trust Agreement.

D. This Supplemental Trust Agreement is being executed and delivered by the City Authority and the Trustee to implement that certain Stipulation and Settlement Agreement entered into by and among the City, the Authority, the Trustee and Ambac Assurance Corporation, a Wisconsin stock insurance corporation (the "**Insurer**").

**NOW, THEREFORE, THIS SUPPLEMENTAL TRUST AGREEMENT  
WITNESSETH:**

It is hereby agreed by the City, Authority and the Trustee, for and in consideration of the premises and the mutual covenants hereinafter contained, as follows:

**ARTICLE I**  
**DEFINITIONS AND MISCELLANEOUS**

SECTION 1.01. Definitions. Except as otherwise indicated herein and unless the context clearly indicates a different meaning, all terms herein shall have the respective meanings set forth in Section 1.01 and the recitals of the Original Trust Agreement, as amended and supplemented by this Supplemental Trust Agreement.

SECTION 1.02. General Rules of Construction. For all purposes of this Supplemental Trust Agreement, except as otherwise expressly provided or unless the context otherwise requires

(A) Defined terms in the singular shall include the plural as well as the singular, and vice versa.

(B) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles. All references herein to "generally accepted accounting principles" refer to such principles as they exist at the date of application there.

(C) All references in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(D) The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Supplemental Trust Agreement as a whole and not to any particular Article, Section or other subdivision.

(E) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(F) The term "person" shall include any individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization and any government or agency or political subdivision thereof.

SECTION 1.03. Captions and Index. Any captions, titles or headings preceding the text of any Article or Section herein and any table of contents or index attached to this Supplemental Trust Agreement or any copy hereof are solely for convenience of reference and shall not constitute part of this Supplemental Trust Agreement or affect its meaning, construction or effect.

SECTION 1.04. Date of Supplemental Trust Agreement. The date of this Supplemental Trust Agreement is intended as and for a date for the convenient identification



of this Supplemental Trust Agreement and is not intended to indicate that the Supplemental Trust Agreement was executed and delivered on said date.

SECTION 1.05. Execution of Several Counterparts. This Supplemental Trust Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and any and all such counterparts, shall together constitute but one and the same instrument.

SECTION 1.06. Governing Law. This Supplemental Trust Agreement shall be construed in accordance with and governed by the State of California.

## **ARTICLE II AMENDMENTS TO ORIGINAL TRUST AGREEMENT**

SECTION 2.01. Amendments.

The Original Trust Agreement shall be amended as follows:

(A) Section 2.11(b) of the Original Trust Agreement shall be amended and restated in its entirety to read as follows:

(b) In the case of any transfer pursuant to paragraph (i) or paragraph (ii) of subsection (a) of this Section 2.11, upon receipt of all Outstanding Certificates by the Trustee, together with a written request of the City or the Insurer to the Trustee, a single new Certificate shall be executed and delivered for each maturity of such Certificate then outstanding, registered in the name of such successor or such substitute depository or their nominees, as the case may be, all as specified in such written request of the City or the Insurer. In the case of any transfer pursuant to paragraph (iii) of subsection (a) of this Section 2.11, upon receipt of all Outstanding Certificates by the Trustee together with a written request of the City or the Insurer, new Certificates shall be executed and delivered in such denominations and registered in the names of such persons as are requested in a written request of the City or the Insurer provided the Trustee shall not be required to deliver such new Certificates within a period less than sixty (60) days from the date of receipt of such a written request of the City or the Insurer.

(B) Section 5.01 of the Original Trust Agreement shall be amended and restated in its entirety to read as follows:

SECTION 5.01. *Assignment of Rights in Lease and Reimbursement Agreement.*

(a) The Authority has, in the Assignment Agreement, transferred, assigned and set over to the Trustee certain of its rights in the Lease, including but not limited to all of the Authority's rights to receive and collect all of the Lease Payments and all other amounts required to be deposited in the Lease Payment Fund pursuant to the Lease or pursuant thereto. All Lease Payments and such other amounts to which the Authority may at any time be entitled shall be paid directly to the Trustee, and all of the Lease Payments collected or received by the Authority shall be deemed to be held and to have been collected or received



by the Authority as the agent of the Trustee, and if received by the Authority at any time shall be deposited by the Authority with the Trustee within one Business Day after the receipt thereof, and all such Lease Payments and other amounts shall be forthwith deposited by the Trustee upon the receipt thereof in the Lease Payment Fund.

(b) The City hereby transfers, assigns and sets over to the Trustee all of the City's rights, title and interest in the Reimbursement Agreement, including but not limited to all of the City's rights to receive and collect the Housing Set-Aside Amounts (as defined in the Reimbursement Agreement) payable to the City under the Reimbursement Agreement. All such Housing Set-Aside Amounts and such other amounts to which the City may at any time be entitled to receive under the Reimbursement Agreement shall be paid directly to the Trustee, and all of the Housing Set-Aside Amounts collected or received by the City under the Reimbursement Agreement shall be deemed to be held and to have been collected or received by the City as the agent of the Trustee, and if received by the City at any time shall be deposited by the Authority with the Trustee within one Business Day after the receipt thereof, and all such Housing-Set Aside Amounts and other amounts shall be forthwith deposited by the Trustee upon the receipt thereof in the Housing Set-Aside Subaccount of the Lease Payment Fund.

(c) As and when required under Section 8.12 hereof, the Trustee shall assign its rights in the Lease and the Reimbursement Agreement, including but not limited to the Authority's right to receive and collect all of the Lease Payments and the City's right to receive Housing Set-Aside Amounts and all other amounts required to be deposited in the Lease Payment Fund or any subaccount thereof to the Insurer. The City and the Authority hereby consent to such assignment; however, such assignment shall not impair, diminish or otherwise affect the City's obligations under the Lease, nor the obligations of the City, in its capacity of Successor Agency to the Agency (the "Successor Agency") under the Reimbursement Agreement nor impose any obligations on the Insurer. Upon assignment, all Lease Payments, Housing Set-Aside Amounts and such other amounts to which the Authority or the City may at any time be entitled with respect to the Certificates shall be paid directly to the Insurer, and all of the Lease Payments collected or received by the Authority or the Housing Set-Aside Amounts received by the City shall be deemed to be held and to have been collected or received by the Insurer for its own account. For avoidance of doubt, the assignment shall not be effected, and shall not impair, diminish or otherwise affect the Trustee's right title and interest to the Lease Payments or Housing Set-Aside Amounts, until the Owners of the Certificates (other than the Insurer) have been paid in full.

(C) Section 5.02 of the Original Trust Agreement shall be amended to add the following after the "Lease Payment Fund" in the first sentence thereof:

" and a "Housing Set-Aside Subaccount therein."

(D) Section 5.03 of the Original Trust Agreement shall be amended to add the following to the end thereof:

“There shall be deposited into the Housing Set-Aside Subaccount all Housing Set-Aside Amounts received by the Trustee and any other moneys required to be deposited therein.”

(E) Section 5.04 of the Original Trust Agreement shall be amended to add the following to the end thereof:

“Notwithstanding the foregoing, the amounts on deposit in the Housing Set-Aside Subaccount shall be applied as follows:

1. From the date hereof until the date all monies in the Reserve Fund as exists as of the date hereof are exhausted to the scheduled payment of amounts due on all Certificates then due and payable;

2. After all monies in the Reserve Fund as of the date hereof are exhausted pursuant to Section 2.7 that certain Stipulation and Settlement Agreement dated as of February 26, 2013 between the City, Insurer, the Authority and the Trustee (the “Settlement Agreement”) in the following order and priority;

(a) to the scheduled payment of all Certificates then due and payable an amount equal to 19.5% of such scheduled payment;

(b) to the Insurer, to repay any payments made by the Insurer under the Insurance Policy to the registered owners of the Certificates, with interest as required by Section 2.8 of the Settlement Agreement;

(c) to the Insurer and the Trustee, to repay any payments made by the Insurer and the Trustee for fees and expenses including attorney’s fees and expenses of the Insurer and the Trustee, with interest as required by Section 6.8 of the Settlement Agreement;

(d) on-parity dollar-for-dollar basis to (i) the Reserve Fund, the amount necessary to make the balance therein equal the Reserve Requirement, and (ii) the payment of the scheduled payment of all Certificates then due and payable as a credit to the City for General Fund Payment (as defined in the Settlement Agreement); and

(e) to the City to reimburse the City for any General Fund Payments previously paid and to the extent the City has been fully reimbursed for all such General Fund Payments (with interest to the extent permitted by the Reimbursement Agreement), for deposit by the City to the Redevelopment Property Tax Trust Fund.”



(F) Section 8.09(f) of the Original Trust Agreement shall be amended and restated in its entirety to read as follows:

SECTION 8.09. *Rights Under Insurance Policy,*

As long as the Insurance Policy shall be in full force and effect, the City and Trustee agree to comply with the following provisions:

(a) At least one (1) Business Day prior to each Interest Payment Date, the Trustee will determine whether there will be sufficient funds in the funds and accounts held under this Trust Agreement to pay the principal of or interest on the Certificates on such Interest Payment Date. If the Trustee determines that there will be insufficient funds in such funds or accounts, the Trustee shall notify the Insurer in writing by certified mail return receipt requested. Such notice shall be deemed sent upon receipt by the Insurer and specify the amount of the anticipated deficiency in the amounts available for debt service due on the Certificates ("Deficiency Amount"), the Certificates to which such deficiency is applicable and whether such Certificates will be deficient as to principal or interest, or both. If the Trustee has so notified the Insurer at least one (1) Business Day prior to the Interest Payment Date, the Insurer will make payments of the Deficiency Amount to the Trustee on or before the Interest Payment Date. If the Trustee has not so notified the Insurer at least one (1) Business Day prior to an Interest Payment Date, the Insurer will make payment of the Deficiency Amount to the Trustee on or before the first (1<sup>st</sup>) Business Day next following the date on which the Insurer shall have received the notice from the Trustee.

(b) The Trustee shall, after giving notice to the Insurer as provided in (a) above, make available to the Insurer the registration books of the Authority maintained by the Trustee and all records relating to the funds and accounts maintained under this Trust Agreement.

(c) The Trustee shall establish an account for the benefit of holders and the Insurer referred to herein as the "Certificate Insurance Payment Account". The Trustee shall deposit upon receipt any amount paid under the Insurance Policy in the Certificate Insurance Payment Account and immediately distribute such amount solely for purposes of payment to the holders for which a claim was made. For the sake of clarity, amounts paid under the Insurance Policy may not be applied to satisfy any costs, expenses or liabilities of the Trustee. Amounts held in the Certificate Insurance Payment Account shall not be invested and any amounts remaining in the Certificate Insurance Payment Account on the first Business Day following an Interest Payment Date, after payment in full of amounts due on the Certificates on such Interest Payment Date, shall be returned to the Insurer by the end of such Business Day.

(d) The amount of any payment of principal of or interest on the Certificates from the Certificate Insurance Payment Account shall be recorded by the Trustee. The Insurer shall have the right to inspect such records upon one (1) Business Day's prior written notice to the Trustee.



(e) In the event that the Trustee has notice (the "Preferential Transfer Notice") that any payment of principal of or interest on a Certificate which has become due for payment and which is made to the beneficial owner by or on behalf of the Authority has been deemed a preferential transfer and theretofore recovered from its registered owner pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, non-appealable order of a court having competent jurisdiction, the Trustee shall, promptly upon receiving such Preferential Transfer Notice, notify the Insurer of such Preferential Transfer Notice and notify all registered owners that in the event that any registered owner's payment is so recovered, such registered owner will be entitled to payment from the Insurer to the extent of such recovery if sufficient funds are not otherwise available, and the Trustee shall furnish to the Insurer its records evidencing the payment of principal of and interest on the Certificates which have been made by the Trustee and subsequently recovered from the registered owners and the dates on which such payments were made.

(f) In addition to those rights granted to the Insurer under this Trust Agreement, and anything herein to the contrary notwithstanding, the City, the Authority, the Trustee and each holder acknowledge and agree, that without the need for any further action on the part of the Insurer, the Insurer shall, to the extent it makes payment of principal of or interest on the Certificates, become subrogated to the rights of the holders of such Certificates to the extent of the payments so made under the Insurance Policy. To evidence such subrogation, the Trustee shall note the Insurer's rights as subrogee on the registration books of the Authority maintained by the Trustee upon payment of amounts from the Certificate Insurance Payment Account to the holders of the Certificates. The Trustee shall simultaneously assign in writing to the Insurer, to the fullest extent permitted by law and in a form acceptable to the Insurer, the rights of the holders of such Certificates to the extent of the payments so made under the Insurance Policy.

(G) Article VIII of the Original Trust Agreement shall be amended by adding Section 8.11 as follows:

SECTION 8.11. *Beneficiary of the Insurance Policy.* The Insurance Policy is able to be drawn upon by the Trustee for the sole benefit of the registered owners of the Certificates. For the benefit of the owners and to insure timely scheduled payment of the debt service on the Certificates, the City and the Authority hereby grant the Trustee the right and power to carry out the provisions related to claims under the Insurance Policy, including, but not limited to, assigning the rights of owners of the Certificates to the Insurer in connection with a payment under the Insurance Policy. In addition to those rights granted to the Trustee under this Trust Agreement, and anything herein to the contrary notwithstanding, the City and the Authority acknowledge and agree and each owner of the Certificates is hereby deemed to have acknowledged and agreed, that without the need for any further action on the part of any owner of the Certificates, the Trustee shall have the right to (a) execute any assignment required by the Insurer in connection with any payments by the Insurer under the Insurance Policy in accordance with the terms of this Trust Agreement, and (b) accept any amendment to or replacement of the Insurance Policy necessary to insure the timely payment of debt service on the Certificates.

(H) Article VIII of the Original Trust Agreement shall be amended by adding Section 8.12 as follows:

SECTION 8.12. *Pledge and Assignment to Insurer.* To secure the subrogation of rights of the Insurer and the payment of the debt service on the Certificates assigned to the Insurer under this Article VIII, the Trustee hereby agrees to grant, bargain, sell, pledge and assign to the Insurer a security interest in all Lease Payments by the City and all right, title and interest of the Trustee in and to the Lease and a security interest in all Housing Set-Aside Amounts received by the Trustee and all right, title and interest of the Trustee to the Reimbursement Agreement, effective upon payment of principal and interest in full of the Certificates to the registered owners thereof (other than the Insurer), provided that nothing contained in this Trust Agreement shall impose any other obligations on the Insurer on account of such pledge and assignment, provided however, that in the event a default by the Insurer under the Insurance Policy exists as of such date, the foregoing pledge and assignment by the Trustee to the Insurer shall not occur or be effective until such default is cured and no defaults by the Insurer exist and are then continuing under the Insurance Policy. The City and the Authority hereby acknowledge and agree to assignment set forth in this Section 8.12.

### **ARTICLE III MISCELLANEOUS**

SECTION 3.01. Confirmation of Trust Agreement. All the terms, covenants and conditions of the Original Trust Agreement, as amended and supplemented by this Supplemental Trust Agreement, are in all respects ratified and confirmed, and the Original Trust Agreement and this Supplemental Trust Agreement shall be read, taken and construed as one and the same instrument.

SECTION 3.02. Rights and Immunities of the Trustee. Notwithstanding anything herein to the contrary, the Trustee is entitled to all of the rights, privileges, and immunities set forth in the Trust Agreement. The Trustee is executing this Supplemental Trust Agreement solely as Trustee with respect to the Certificates and not in its capacity as trustee with respect to any other obligations of the Authority, City or Successor Agency. Furthermore, nothing herein is intended to impair any rights, remedies and interests, including without limitation, liens, of any of the Parties hereto in any other capacity.

**IN WITNESS WHEREOF**, the City, the Authority and the Trustee have caused this instrument to be duly executed and their respective corporate seals to be hereunto affixed and attested.

CITY OF STOCKTON

By \_\_\_\_\_

[SEAL]

Attest: \_\_\_\_\_

STOCKTON PUBLIC FINANCING  
AUTHORITY

By \_\_\_\_\_

WELLS FARGO BANK NATIONAL  
ASSOCIATION, as Trustee under the Trust  
Agreement

By \_\_\_\_\_



### CONSENT OF THE INSURER

The undersigned is the Insurer as defined in that certain Trust Agreement dated as of June 1, 2003 (the "**Original Trust Agreement**"), by and between the City of Stockton, the Stockton Public Finance Authority (the "Authority") and Wells Fargo Bank, National Association, as trustee (the "Trustee") and hereby represents and warrants to the Trustee and the Authority, upon which the Trustee and the Authority are relying on entering into this Supplemental Trust Agreement, that the Insurer is not in default under the Insurance Policy. Terms not defined herein shall have the meaning set forth in the Original Trust Agreement.

Pursuant to and in accordance with Sections 9.02 and 13.13 of the Original Trust Agreement, the undersigned Insurer hereby consents to the execution and delivery of the Supplemental Agreement dated as of [●], 2013 between the Authority, the City of Stockton and Wells Fargo Bank, National Association.

AMBAC ASSURANCE CORPORATION

By: \_\_\_\_\_

**Exhibit C**

MARC A. LEVINSON (SBN 57613)  
**ORRICK, HERRINGTON & SUTCLIFFE LLP**  
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Telephone: 916.447.9200  
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Email: [malevinson@orrick.com](mailto:malevinson@orrick.com)

Attorneys for Defendant  
CITY OF STOCKTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN JOAQUIN

AMBAC ASSURANCE CORPORATION,  
a Wisconsin corporation,

Plaintiff,

v.

CITY OF STOCKTON, a charter city and  
municipal corporation existing under its  
charter and the constitution of the State of  
California,

Defendant.

CASE NO. \_\_\_\_\_

**DEFENDANT'S CONFESSING OF  
JUDGMENT STATEMENT**  
[Code Civ. Proc., § 1133]

1. I, John M. Luebberke, City Attorney for the City of Stockton, a charter city and municipal corporation existing under its charter and the constitution of the State of California (the "**City**"), confess judgment in favor of plaintiff and authorize the entry of judgment against the City in the amount appearing due and owing under that certain stipulation and agreement, dated as of February 26, 2013 (the "**Agreement**"), not to exceed \$12,625,000, plus the costs of collection, including reasonable attorney fees and legal costs.

2. The sum confessed for claim is justly due based on the following facts:



a. The City and Stockton Public Financing Authority (the “**Authority**”) are parties to that certain Site and Facility Lease dated as of June 1, 2003 (the “**Site Lease**”), pursuant to which the City agreed to lease to the Authority certain property consisting primarily of the City’s main downtown police facility, a library and three fire stations (the “**Leased Premises**”), as more fully described in the Site Lease.

b. The City and the Authority are parties to that certain Lease Agreement dated as of June 1, 2003 (the “**Lease**”), pursuant to which the City, among other things, subleases from the Authority the Leased Premises.

c. The City, Authority and Wells Fargo Bank, National Association (the “**Trustee**”) are parties to that certain Trust Agreement dated as of June 1, 2003 (the “**Trust Agreement**”), pursuant to which the Trustee executed and delivered those certain Certificates of Participation, (Redevelopment Housing Projects) Series 2003A in the original principal amount of \$1,160,000 and Taxable Series 2003B in the original principal amount of \$12,140,000 (the “**Certificates**”), which Certificates are obligations of the Authority, payable from and secured by the revenues and receipts derived by the Authority from the Lease.

d. The Trustee and Authority are parties to that certain Assignment Agreement dated as of June 1, 2003 (the “**Assignment Agreement**”), pursuant to which the Authority, among other things, assigned to the Trustee for the benefit of holders of the Certificates, substantially all of the Authority’s right, title and interest in and to the Lease, including its right to receive the Lease Payments due under the Lease.

e. Plaintiff issued that certain Financial Guaranty Insurance Policy Number 21154BE with an effective date of June 27, 2003 (the “**Insurance Policy**”), pursuant to which plaintiff, among other things, agreed to make scheduled payments of principal and interest on the Certificates pursuant to its terms.

f. On June 28, 2012, the City filed a voluntary petition for relief under chapter 9 of title 11 of the United States Code, thereby commencing Bankruptcy Case No. 12-32118 (the “**Bankruptcy Case**”) before the United States Bankruptcy Court for the Eastern District of California.

g. The City is in default under the Lease pursuant to Sections 8.1(b) and (d) of the Lease.

h. The aforementioned parties and their counsel engaged in good faith, arms’ length settlement discussions regarding a consensual resolution of potential disputes between and among the Parties arising out of or related to the Lease, Trust Agreement, and the Insurance Policy.

i. As part of the Parties’ negotiated settlement, the City is obligated to make certain payments, defined as the “**General Fund Payments**” under the Agreement.

j. The judgment is confessed pursuant to this Defendant’s Confessing Of Judgment Statement to secure the City’s payment obligations under the Agreement in the event the Bankruptcy Case is dismissed and the City fails to make the payments required under the Agreement.

Dated: February \_\_, 2013

Defendant, City of Stockton

By: \_\_\_\_\_  
Name: John M. Luebberke  
Title: City Attorney

VERIFICATION

I \_\_\_\_\_, \_\_\_\_\_ for the City of Stockton, a charter city and municipal corporation existing under its charter and the constitution of the State of California (the "City"), the defendant in this proceeding. I have read the foregoing statement and know its contents. The matters stated in it are true of my own knowledge, except as to those matters which are therein stated on my information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February \_\_, 2013

By: \_\_\_\_\_  
Name:  
Title:



MARC A. LEVINSON (SBN 57613)  
**ORRICK, HERRINGTON & SUTCLIFFE LLP**  
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Attorneys for Defendant  
CITY OF STOCKTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN JOAQUIN

AMBAC ASSURANCE CORPORATION,  
a Wisconsin corporation,

Plaintiff,

v.

CITY OF STOCKTON, a charter city and  
municipal corporation existing under its  
charter and the constitution of the State of  
California,

Defendant.

CASE NO. \_\_\_\_\_

**ATTORNEY CERTIFICATE IN SUPPORT  
OF DEFENDANT'S CONFESSING OF  
JUDGMENT STATEMENT**  
[Code Civ. Proc., § 1132(b)]

1. I, Marc A. Levinson, am an attorney licensed to practice law in the State of California, and am the attorney of record for City of Stockton, a charter city and municipal corporation existing under its charter and the constitution of the State of California (the "City"), defendant in the above-entitled matter.

2. I was retained by the City to independently represent it in the above-entitled matter.

3. I have examined the proposed judgment and have advised the City with respect to the waiver of rights and defenses under the confession of judgment procedure and have advised the City to utilize the confession of judgment procedure.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February \_\_, 2013

---

Marc A. Levinson  
Attorney for Defendant, City of Stockton

**Exhibit D**



[●], 2013

Wells Fargo Bank, National Association  
Minneapolis, Minnesota

\$1,160,000  
City of Stockton Certificates of Participation  
(Redevelopment Housing Projects)  
Series 2003A

Ladies and Gentlemen:

Certificates of Participation (Redevelopment Housing Projects), Series 2003A (the "Certificates") evidencing the direct, undivided fractional interests of the owners thereof in lease payments (the "Lease Payments") to be made by the City of Stockton (the "City") pursuant to a Lease Agreement, dated as of June 1, 2003 (the "Lease Agreement"), between the City and the Stockton Public Financing Authority were executed and delivered by the City on June 27, 2003, pursuant to a Trust Agreement, dated as of June 1, 2003 (the "Trust Agreement") by and among the City, the Stockton Public Financing Authority, and Wells Fargo Bank, National Association, as trustee (the "Trustee"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Trust Agreement.

Pursuant to the order of United States Bankruptcy Court of the Eastern District of California, on or about the date hereof (the "Order") and the related Stipulation and Settlement Agreement, certain terms of the documents related to the Certificates are changing (as described in the Order and the Stipulation and Settlement Agreement, the "Adjustments"), including amendments to the Trust Agreement and adjustments to the Trustee's and the Insurer's rights and remedies under the Lease Agreement and the Trust Agreement. The Stipulation and Settlement Agreement requires that we, as counsel to the City, deliver an opinion to the effect that the exclusion from gross income for federal income tax purposes of the portion of the Lease Payments designated as and comprising interest and received by the owners of the Certificates will not be adversely affected by the Adjustments. We have reviewed the Stipulation and Settlement Agreement, the Lease Agreement, the Trust Agreement, the Order, a certificate of the City, dated the date hereof as to certain factual matters and expectations, and such other documents, opinions and matters to the extent we deemed necessary to render the opinion set forth herein. For purposes of this opinion, "Lease Payments"

shall mean the sum of the "General Fund Payment," the "Housing Set-Aside Amounts" (both as defined in the Stipulation and Settlement Agreement) and payments from the Reserve Fund.

The opinion expressed herein is based on an analysis of existing laws, regulations, rulings and court decisions and covers certain matters not directly addressed by such authorities. Such opinion may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof, and we disclaim any obligation to update this opinion. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any party other than the City. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Stipulation and Settlement Agreement, the Lease Agreement, the Trust Agreement (except to the extent excused pursuant to the Stipulation and Settlement Agreement) and certain certificates of the City (including any supplements or amendments thereto), including (without limitation) covenants and agreements compliance with which is necessary to assure that actions, omissions or events on and after the date of execution and delivery of the Certificates have not caused and will not cause interest on the Certificates to be included in gross income for federal income tax purposes. We have not undertaken to determine compliance with any of such covenants and agreements or any other requirements of law, and, except as expressly set forth below, we have not otherwise reviewed any actions, omissions or events occurring after the date of execution and delivery of the Certificates or the exclusion of interest on the Certificates from gross income for federal income tax purposes. Accordingly, no opinion is expressed herein as to whether interest on the Certificates is excludable from gross income for federal income tax purposes or as to any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Certificates. We call attention to the fact that we have not previously rendered any opinions with respect to the Certificates and that Jones Hall, a Professional Law Corporation, delivered an opinion at the time the Certificates originally were executed and delivered to the effect that the portion of the Lease Payments designated as and comprising interest and received by the owners of the Certificates is excluded from gross income for federal income tax purposes.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the opinion that the Adjustments will not, in and of themselves, adversely affect any exclusion of the portion of the Lease Payments designated as and comprising interest and received by the owners of the Certificates from gross income for purposes of federal income taxation.

This opinion is furnished by us as counsel to the City solely for purposes of the Stipulation and Settlement Agreement. No attorney-client relationship has existed or exists between our firm and the Trustee in connection with the Certificates or by virtue of this opinion, and we disclaim any obligation to update this opinion. This opinion is delivered to the addressee hereof pursuant to the Stipulation and Settlement Agreement and is not to be used or relied upon for any other purpose or by any person. This opinion is not intended to, and may not, be relied upon by owners of Certificates or any other party to whom it is not specifically addressed.

Very truly yours,

ORRICK, HERRINGTON & SUTCLIFFE  
LLP